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SERVICE DATE - DECEMBER 5, 2003

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-565 (Sub-No. 15X)

NEW YORK CENTRAL LINES, LLC–DISCONTINUANCE EXEMPTION–
IN HENRY COUNTY, IN

STB Docket No. AB-55 (Sub-No. 639X)

CSX TRANSPORTATION, INC.–DISCONTINUANCE EXEMPTION–
IN HENRY COUNTY, IN

Decided: December 4, 2003

By petition filed on August 18, 2003, New York Central Lines, LLC (NYC) and CSX Transportation, Inc. (CSXT) (collectively petitioners), jointly seek an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to discontinue service over a 1.64-mile line of railroad in the Western Region, Great Lakes Division, Indianapolis Line Subdivision, extending from milepost QIN 95.34 to milepost QIN 96.98, in New Castle, Henry County, IN. Notice of the filing was served and published in the Federal Register on September 5, 2003 (68 FR 52817-18). The exemption will be granted, subject to standard employee protective conditions.

BACKGROUND

Pursuant to Board authorization in 1998, CSX Corporation, CSXT's parent company, and Norfolk Southern Corporation jointly acquired control of Conrail Inc., and its wholly owned subsidiary, Consolidated Rail Corporation (Conrail). As a result of that acquisition, certain assets of Conrail have been assigned to NYC, a wholly owned subsidiary of Conrail, to be exclusively operated by CSXT pursuant to an operating agreement. The line to be discontinued is included among the property being operated by CSXT pursuant to the NYC operating agreement.

Petitioners have filed for discontinuance authority only, as the intention is to leave the line in place. According to petitioners, Allegheny Ludlum, a company specializing in the technology, production and marketing of stainless steels, silicon electrical steels, tool steels, titanium, nickel alloys and other advanced alloys, is the only shipper on the line. The Allegheny Ludlum facility in New Castle primarily produces stainless steel sheets. It received 229 carloads of inbound traffic in 2001 and 19 carloads in 2002. However, it has not received any traffic by rail since March 2002. Petitioners state that Allegheny Ludlum is currently using motor carrier transportation for all inbound shipments. State

Road 38 runs through New Castle, and Interstate 70 is approximately 10 miles away via State Road 3 or 103. Petitioners submit that Allegheny Ludlum is aware of the petition.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail carrier may not discontinue operations without the Board's prior approval. Under 49 U.S.C. 10502, however, the Board must exempt a transaction or service from regulation when it finds that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

Detailed scrutiny under 49 U.S.C. 10903 is not necessary to carry out the rail transportation policy. By minimizing the administrative expense of the application process, an exemption will reduce regulatory barriers to exit [49 U.S.C. 10101(7)]. An exemption will also foster sound economic conditions and encourage efficient management by allowing petitioners to discontinue operations on a line that generates minimal traffic [49 U.S.C. 10101(5) and (9)]. Other aspects of the rail transportation policy will not be affected adversely.

Regulation of the proposed transaction is not necessary to protect shippers from the abuse of market power because the only shipper on the line appears to no longer use rail service and has adequate transportation alternatives available. Given the finding regarding market power, it is not necessary to determine whether the proposed discontinuance is limited in scope. Nevertheless, to ensure that Allegheny Ludlum is informed of the Board's decision, petitioners will be required to serve a copy of this decision on the shipper within 5 days of the service date of this decision and certify to the Board that it has done so.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a carrier of its statutory obligation to protect the interests of its employees. Accordingly, as a condition to granting this exemption, the employee protective conditions set forth in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979), will be imposed.

Because this is a discontinuance proceeding and not an abandonment, the Board need not consider offers of financial assistance (OFA) to acquire the line for continued rail service (the OFA provisions for a subsidy to provide continued rail service do apply to discontinuances), trail use requests, or requests to negotiate for public use of the line. This proceeding is also exempt from environmental reporting requirements under 49 CFR 1105.6(c) and from historic reporting requirements under 49 CFR 1105.8(b). Therefore, this decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Under 49 U.S.C. 10502, the Board exempts from the prior approval requirements of 49 U.S.C. 10903 the discontinuance of service by NYC and CSXT of the operations described above, subject to the employee protective conditions in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979).

2. Petitioners are directed to serve a copy of this decision on Allegheny Ludlum within 5 days after the service date of this decision and to certify to the Board that it has done so.

3. An OFA under 49 CFR 1152.27(b)(2) to subsidize continued rail service must be received by the railroads and the Board by December 15, 2003, subject to time extensions authorized under 49 CFR 1152.27(c)(1)(i)(C). The offeror must comply with 49 U.S.C. 10904 and 49 CFR 1152.27(c)(1). Each OFA must be accompanied by a \$1,100 filing fee. See 49 CFR 1002.2(f)(25).

4. OFAs and related correspondence to the Board must refer to this proceeding. The following notation must be typed in bold face on the lower left-hand corner of the envelope: **“Office of Proceedings, AB-OFA.”**

5. Provided no OFA to subsidize continued rail service has been received, this exemption will be effective on January 4, 2004. Petitions to stay must be filed by December 22, 2003. Petitions to reopen must be filed by December 30, 2003.

By the Board, Chairman Nober.

Vernon A. Williams
Secretary